

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**EDDIE J. SETTLES, as
Special Administrator on behalf of
DELORES E. SETTLES, deceased,**

Plaintiff,

v.

PFIZER, Inc.,

Defendant.

Case No. 06-cv-29-DRH

ORDER

HERNDON, District Judge:

Before the Court is Plaintiff's Motion for Dismissal Without Prejudice (Doc. 19), filed pursuant to **Federal Rule of Civil Procedure 41(a)**. Defendant has opposed this Motion, requesting that a dismissal of Plaintiff's claims be *with* prejudice, rather than without prejudice (Doc. 20). Defendant argues that it has already expended considerable time, money and effort in defending this case. Further, Defendant feels that this is merely Plaintiff's attempt to circumvent the discovery deadlines, as Plaintiff failed to timely designate an expert witness and has otherwise displayed a "lack of diligence" in pursuing his case (Doc. 20, pp. 2-3). Additionally, Defendant observes Plaintiff has not given any supporting reason why a dismissal should be without prejudice. At the least, Defendant requests the Court, if it should grant a dismissal without prejudice, impose a condition that Plaintiff must re-file his claims in federal court.

Despite Defendant's assertions, in viewing the record, as this case is still in its early stages, Defendant should not have incurred too great an expense and more importantly, Defendant has failed to advise the Court of its costs incurred. However, the Court does feel that there should be some conditions imposed on a dismissal without prejudice. Therefore, pursuant to **Rule 41(a)(2)**, the Court **GRANTS** Plaintiff's Motion for Dismissal Without Prejudice (Doc. 19), and further requires that if Plaintiff should choose to later re-file his claims as stated in this case, he shall re-file it with this Court - the United States District Court for the Southern District of Illinois, and on the civil cover sheet indicate it is a related case, so that it may be reassigned to this Judge. At that time, Defendant may then file a petition for attorneys fees and costs which the Court will then consider. Plaintiff shall also be required to disclose the name of his expert witness with the initial **Rule 26** disclosures. *See Mother & Father v. Cassidy*, 338 F.3d 704, 709 (7th Cir. 2003)("Rule 41(a)(2) grants a district court broad discretion to impose conditions on a voluntary dismissal of a claim.")(internal citations omitted). Thus, this case is currently **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Signed this 3rd day of October, 2006.

/s/ David RHerndon
United States District Judge